

F. A. STACY

IBLA 82-1233

Decided November 16, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. NM MC 82092 through NM MC 82094.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2 in the proper Bureau of Land Management Office within the time periods prescribed conclusively constitutes abandonment of the mining claim by the owner.

APPEARANCES: F. A. Stacy, pro se.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

F. A. Stacy has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated June 30, 1982, declaring the unpatented Stacy Nos. 1, 2, and 3 placer mining claims, NM MC 82092 through NM MC 82094, abandoned and void for failure to file evidence of assessment work or notice of intention to hold the claims, on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2-1.

The claims in this appeal were located in 1948 for sand and gravel. A copy of the recorded notice of location had been timely filed with BLM, together with proof of assessment work for 1979. Additional evidence of assessment work was filed in 1980, but no filing was made in 1981.

Appellant states that, because of his poor physical condition and the serious illness of his wife, he simply forgot to file the evidence of assessment work in 1981. The work was performed and duly recorded in Chaves County, New Mexico.

[1] Section 314 of FLPMA requires the owner of an unpatented mining claim to file evidence of assessment work performed on the claim or a notice of intention to hold the claim with BLM on or before December 30 of each calendar year. Failure to so file within the prescribed time limit is statutorily considered conclusively to constitute an abandonment of the claim by the owner. 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a). See Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). A filing only in the county does not satisfy this requirement.

When appellant failed to file timely with BLM either a proof of labor or a notice of intention to hold the unpatented mining claim, BLM properly held the claim abandoned and void. Robert E. Eiseman, 50 IBLA 145 (1980). The responsibility for complying with the recordation requirements rested with appellant. This Board has no authority to excuse lack of compliance, no matter how persuasive the excuse of appellant may be. Lynn Keith, *supra*; A. J. Grady, 48 IBLA 218 (1980).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Newton Frishberg
Administrative Judge
Alternate Member

